

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MICHAEL L. JOHNSON,
Plaintiff,
vs.

Case No. 1:20-cv-157
McFarland, J.
Litkovitz, M.J.

BRYAN LAWLESS,
Defendant.

ORDER

Plaintiff, an inmate at the Toledo Correctional Institution, filed this pro se civil rights complaint under 42 U.S.C. § 1983 alleging violations of his First and Eighth Amendment rights while incarcerated at the Southern Ohio Correctional Facility (SOCF).¹ Plaintiff alleges that defendant used excessive force against him during a cell search pat down on March 10, 2018 and retaliated against him for filing grievances and lawsuits against corrections officers.

In 2021, defendant moved for summary judgment (Doc. 62) but failed to support it with admissible evidence. The Court ordered defendant to file specific evidence no later than February 8, 2022. (Doc. 84). Despite the February 8, 2022 deadline, defendant failed to file the required evidence so the Court recommended that defendant's 2021 motion for summary judgment (Doc. 62) be denied without prejudice. (Doc. 87). Defendant failed to file timely objections to the Court's Report and Recommendation so defendant's motion for summary judgment (Doc. 62) was denied without prejudice. (Doc. 91).

Following defendant's failure to timely file the evidence, plaintiff filed the first of two pending motions to compel discovery (Doc. 90). His motion seeks to compel defendant to file the evidence as ordered.

¹ Plaintiff's remaining claims were dismissed on sua sponte screening of the complaint pursuant to sections 804 and 805 of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). (Doc. 9).

Plaintiff also filed the instant motion to clarify the docket sheet (Doc. 93). In this motion, plaintiff alleges that various corrections officers have threatened him in various ways, including interfering with his mail so that he misses applicable court deadlines and/or fears that the Court failed to receive certain filings. Plaintiff asks the Court to clarify whether specific filings have been received.

On March 7, 2022, defendant filed two sets of interrogatory answers. (Docs. 94-1, 94-2). On April 11, 2022, defendant submitted the video recordings from SOCF security cameras captured on March 10, 2018. Plaintiff then moved for leave to file a motion for summary judgment (Doc. 97). On June 13, 2022, plaintiff filed another motion to compel discovery (Doc. 98). In this motion, plaintiff seeks an order compelling defendant to produce the authenticated documents responsive to his previous document requests. On August 2, 2022, defendant filed affidavits finally authenticating the documents produced earlier and clarifying any remaining evidentiary issues. (Docs. 99-3 through 99-6).

On August 2, 2022, defendant filed a motion for summary judgment (Doc. 101). Because it did not comply with S.D. Ohio Local Rule 5.1 related to text searchable PDF files, the Clerk of Courts instructed defendant to refile the motion in a compliant format. (Doc. 103). Defendant refiled the motion for summary judgment in compliance with Local Rule 5.1 on August 3, 2022 (Doc. 105). Plaintiff opposed defendant's motion for summary judgment (Docs. 107, 110, and 111) and "respectfully request[ed] that plaintiff [sic] civil action complaint be granted" (Doc. 107 at PAGEID 1431). In addition, plaintiff filed a motion for extension of time to respond to defendant's motion for summary judgment (Doc. 108) and a motion for leave to file excess pages in responding to defendant's motion for summary judgment (Doc. 109). Defendant filed a reply memorandum in support of his motion for summary judgment (Doc. 112). The Court has

reviewed the documents filed by both parties and concludes that this matter is now ripe for decision on summary judgment.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's motions to compel (Docs. 90 and 98) are **DENIED AS MOOT** because defendant has now filed the evidence requested;
2. Plaintiff's motion to clarify the docket sheet (Doc. 93) is **GRANTED**;
3. The Clerk of Courts is **INSTRUCTED** to mail to plaintiff a paper copy of the docket sheet with a copy of this Order;
4. Plaintiff's motion for leave to file motion for summary judgment (Doc. 97) is **DENIED AS MOOT** because the Court construes Doc. 107 as plaintiff's cross-motion for summary judgment and Docs. 110 and 111 as additional memoranda in support;
5. Defendant's non-compliant motion for summary judgment (Doc. 101) is **DENIED AS MOOT**. The Court will issue a separate Report and Recommendation addressing defendant's properly-filed motion for summary judgment (Doc. 105) and plaintiff's cross-motion for summary judgment (Doc. 107);
6. Plaintiff's motion for extension of time to file a response (Doc. 108) is **GRANTED**. The Court has received and accepted for filing plaintiff's response and supplemental memoranda (Docs. 107, 110, 111); and
7. Plaintiff's motion for leave to file excess pages (Doc. 109) is **GRANTED**.

Date: 12/15/2022


Karen L. Litkovitz
United States Magistrate Judge